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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 MARKET PLACE NORTH  
11 CONDOMINIUM ASSOCIATION, a  
12 Washington non-profit corporation,

13 Plaintiff,

14 v.

15 AFFILIATED FM INSURANCE  
16 COMPANY,

17 Defendant.

Case No. C17-625 RSM

ORDER RE: IN CAMERA REVIEW OF  
DOCUMENTS AND PLAINTIFF'S  
MOTION TO COMPEL

18 This matter comes before the Court on Plaintiff Market Place North Condominium  
19 Association ("the Association")'s Motion to Compel Documents (Dkt. #35) and the Court's  
20 Order requesting in camera review (Dkt. #69).

21 The background for this Motion was set forth in the Court's prior Order. To reiterate,  
22 the Association's Motion addresses attorney-client privilege asserted by AFM for certain  
23 documents. AFM provided the Association with documents created during its investigation  
24 including (1) a file titled "claim file," (2) emails of DiAnna Webber (AFM's principal adjuster  
25 of the Association's claim), and (3) emails of two other AFM employees, Richard Sunny and  
26 Erik Lonson, involved in the adjustment and denial of the Association's claim. Dkt. #36 at 2.  
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ORDER RE: IN CAMERA REVIEW OF DOCUMENTS AND PLAINTIFF'S MOTION TO  
COMPEL - 1

1 AFM provided several privilege logs claiming the attorney-client privilege for these and other  
2 documents. *See* Dkt. #36-1. According to the Association, AFM claims this privilege for some  
3 communications created seven months before this suit was filed and 13 months before the  
4 apparent coverage denial letter in September 2017. *Id.* at 6. The Association argues that it is  
5 entitled to the above discovery pursuant to *Cedell v. Farmers Ins. Co. of Washington*, 176  
6 Wn.2d 686, 295 P.3d 239 (2013) and the civil fraud exception.

8 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to  
9 any party’s claim or defense and proportional to the needs of the case, considering the  
10 importance of the issues at stake in the action, the amount in controversy, the parties’ relative  
11 access to relevant information, the parties’ resources, the importance of the discovery in  
12 resolving the issues, and whether the burden or expense of the proposed discovery outweighs  
13 its likely benefit.” Fed. R. Civ. P. 26(b)(1). If requested discovery is not answered, the  
14 requesting party may move for an order compelling such discovery. Fed. R. Civ. P. 37(a)(1).  
15 The party that resists discovery has the burden to show why the discovery request should be  
16 denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975).

19 In its Motion, the Association argued that, pursuant to *Cedell*, the attorney-client  
20 privilege generally does not apply to the claims-adjustment process, but that *Cedell* recognized  
21 an exception when the attorney is not actually engaged in investigating and evaluating or  
22 processing the claim. Dkt. #35 at 7. The Association argued that AFM should have sought a  
23 protective order prior to the documents being due and asked the Court to undertake an in  
24 camera review of the documents it intended to withhold. *Id.* at 8. Finally, the Association  
25 argued that the civil fraud exception applies here. Dkt. #35 at 11–12. The Association sought  
26 an order to produce “all documents on the four privilege logs at issue that [AFM] is  
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1 withholding based on attorney-client privilege (and any similar documents that it intends to  
2 withhold from future productions on the same grounds).” *Id.* at 6–7.

3 AFM argued that, although it did hire counsel at an early stage, “counsel has not  
4 performed AFM’s adjustment or investigation of [the Association]’s Notice of Loss or Claim—  
5 that was done by AFM adjusters and its consultants at WJE, who attended MPN’s invasive  
6 exploratory investigation.” Dkt. #38 at 5. AFM stated that counsel only “provided legal advice  
7 and strategy relating to coverage and AFM’s obligations under the Policy.” *Id.* AFM asserted  
8 that it has produced a variety of unredacted attorney-client communications, redacting or  
9 withholding “only attorney fee invoices and communications where AFM counsel was asked to  
10 or did provide legal advice or strategy as to AFM’s “potential liability” or coverage, which  
11 *Cedell* protects.” *Id.* at 4.

14 On Reply, the Association argued that it “was able, after comparing and contrasting  
15 multiple iterations of privilege logs submitted by AFM with contradictory descriptions and  
16 categorizations of documents, to identify four key letters signed by DiAnna Webber that  
17 appeared to have been drafted by AFM’s attorneys at Wilson Smith Cochran Dickerson  
18 (WSCD).” Dkt. #42 at 1–2. These letters are part of the documents withheld by AFM. The  
19 Association cites to *Bagley v. Travelers Home & Marine Ins. Co.*, No. C16-0706 JCC, 2016  
20 WL 4494463, \*3 (W.D. Wash. Aug. 25, 2016) as a case on point where the Court held that  
21 *Cedell* “applies broadly to the quasi-fiduciary task of claim handling, and is not limited to only  
22 pre-litigation activities.”

25 In Response to the Court’s Order granting in camera review, AFM agreed to voluntarily  
26 produce to the Association unredacted copies of all documents related to the “four key letters”  
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1 above. Dkt. #70 at 2. AFM also produced other documents “arguably related to claim  
2 handling and claim investigation activities.” *Id.*

3 The Court, having now conducted an in camera review of the remaining unproduced  
4 documents submitted as agreed by the parties, finds that the attorney client privilege was  
5 properly asserted for the remaining documents. In these documents, defense counsel is not  
6 engaged in investigating and evaluating or processing the claim, but providing legal advice.  
7 The Court finds that the civil fraud exception from *Cedell* does not apply. Given the  
8 documents voluntarily produced by AFM, the Court need not grant the relief requested by  
9 AFM and will deny the Motion as to all remaining issues.  
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11 **I. CONCLUSION**  
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13 Having reviewed the relevant briefing, the declarations and exhibits attached thereto,  
14 and the remainder of the record, the Court hereby finds and ORDERS that Plaintiff Market  
15 Place North Condominium Association’s Motion to Compel Documents (Dkt. #35) is  
16 DENIED.  
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18 DATED this 17<sup>th</sup> day of August 2018.

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21 RICARDO S. MARTINEZ  
22 CHIEF UNITED STATES DISTRICT JUDGE  
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